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The New "Workmen's Councils" Legislation

Betriebsrätegesetz

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THE WORKMEN IN THE NEW GERMANY

IT is not the natural resources of Germany but industry and organization which have been responsible for its wonderful progress. By the peace treaty Germany is deprived of many of its resources. The burdens of the war and of the peace treaty and the depreciation of the German money have wrecked German property values. As a result of the peace treaty still heavier taxes will have to be raised in Germany than in any other country. They do not suffice to replace the values squandered in the first period of the revolution. The political incapacity of those people, whom the revolution brought into power, has created laws which prevent any formation of property. Only labor can create new values, and only labor provides the basis for the new structure of German finances. The strengthening of Germany and with it the creation of a dam against the communistic wave approaching from the east of Europe is thinkable only if every German will work and if labor is promoted. The German labor question offers, therefore, an interest not solely for the experts of social law.

Only very few earn their living in the establishments belonging to themselves and conduct their own businesses. All the rest are occupied in other people's establishments as workmen or employes, from the unskilled handworker to the creative leaders

trained at universities, whose activity as regards extent and quality by far surpasses whatever the most successful employers have attained in former decades. But they are all workmen and were up to the present completely dependent on the will of the employer. There rules the absolutism of the employer. It is to be said in his honor that it was uniformly the enlightened absolutism of a Frederick the Great. As formerly economic needs led to an uprising against the absolutism in the state, this is the case now in the economic life. Salvation is considered to be found in the coöperation in the management of the enterprise of those hitherto ruled—the workmen. People do not want to be dependent on the arbitrariness of a third party concerning a value of a fortune which is in most cases the sole one. The revolution rolling on from the east has its share. It is a social, not a political revolution. It originated in Russian conditions and ideas. It was nourished by the long war with its misery and, what is more important, by the aversion to all kind of work which it caused. Had it not forced youths and men in the prime of life to be idle for years as soldiers? The idea of forming representative bodies (councils, soviets) within the various enterprises, army groups, etc., was copied from the Russians. Workmen's councils were elected in the crudest form. On the one hand they were to usurp political power; on the other, to con-

trol economic enterprises. These were to be changed from absolute monarchies into the most radical republics. The bolshevic "Paradise of Councils" was, however, almost universally refused in Germany. But in what way the enterprises were to be constitutionalized, what kind of joint control was to be conceded to the workman, who was at all to be considered a workman,—these questions formed a main subject in the deliberations of the German assembly framing the constitution.

WORKMEN'S REPRESENTATION BEFORE THE "BETRIEBSRÄTEGESETZ"

It was always understood in Germany that a workman who fulfills his duty absolutely should not be dismissed from a progressive concern according to the whim of the employer. But there existed also workmen's representations here and there for decades. In the labor protection law of June 1, 1891, a workmen's committee was for the first time legally provided for. When established, it coöperated especially with the issuing of working regulations. This has been made use of in several cases in order to create a counter movement against the influence of the trade-unions. Through the laws regulating the operation of mines passed in the individual states (first in Prussia) the representation of workmen became obligatory in mining concerns employing at least a hundred workmen.

During the war, work was organized behind the front by the law of December 5, 1916, respecting national auxiliary service. It referred to the compulsory labor of those liable to do auxiliary service, and created a body for proposals, wishes and complaints of the laborers concerning the working contract. Committees of workmen and employes were, there-

fore, created for establishments employing at least fifty workmen or employes, and in connection with this, a foundation was laid for the settling of labor disputes by an arbitration board. The revolution brought the national auxiliary service to an end.

The phantom of councils excited many a man. The people's commissaries, who had gained power through the workmen, wished to preserve for the workmen the achievements of the auxiliary service law, but at the same time they wished to prevent a dictatorship of councils dangerous to themselves. Hence came about the decree of December 23, 1918, concerning wage agreements, workmen's and employes' committees, and the adjustment of labor disputes, a decree technically very faultily worked out and with content incomplete. The workmen's and employes' committees had separate representatives. They were to be established in the case of either twenty workmen or employes being employed. As principal tasks of the committees were stated: Protection of the economic interests of the workmen against the employer; control and execution of the wage agreements with the trade-unions and in default of wage agreements co-operation in the settling of wages and other labor agreements. Completed by a number of separate stipulations, this decree was in practical operation for about one year and a quarter, until the "Betriebsrätegesetz" was put in its place.

FORMATION OF THE "BETRIEBSRÄTEGESETZ"

The idea of the council's government was refused. But a small, extremely energetic radical group worked for it again and again. The ruling coalition did not show any resolute-

ness in face of all radical efforts. Statesmanlike insight was in opposition to the socialistic-democratic dogma. So after serious struggles the "Rätegedanke" (council's idea) became incorporated into article 165 of the constitution—as it was emptily expressed, "anchored." It is stipulated therein: "For the protection of their social and economic interests the workmen and employes are given legal representations in factory workmen's councils (Betriebsarbeiterräte) as well as in district workmen's councils, organized according to economic boundaries, and in an empire workmen's council (Reichsarbeiterrat)."

These councils at the side of the Reichstag and the legislative bodies of the individual states create an impossible dual representation. But, under their constitutional powers, these councils cannot, however, be denoted as being anything more than phrases for the quieting of council dogmatists. The district workmen's councils and the empire workmen's councils have not even in a provisory form come into existence during the duration of the National Assembly. The workmen's councils act is the sole transitional act. It omits speaking of *workmen's* councils, but deals with "Betriebsräte" and mentions the district economic council (Bezirkswirtschaftsrat), the states economic council (Landeswirtschaftsrat) and the empire economic council (Reichswirtschaftsrat) without creating the same.

The act was passed after the fiercest struggles as a result of the most incredible compromises between the parties of the then coalition and satisfies nobody in its details.

SUMMARY OF THE "BETRIEBSRÄTEGESETZ"

The act, originating from compromises, is devoid of homogeneity. The

summary is, therefore, not an easy one. Externally it is divided into six principal parts: General regulations, construction of the working representations, tasks and competence of the working representations, settlement of disputes, regulations concerning protection and punishment, regulations concerning the execution and transition of the law. The first three main parts only are of a general interest and among these especially the third.

GENERAL REGULATIONS OF THE "BETRIEBSRÄTEGESETZ"

The workmen's representation is to exist not for a whole concern stretching out far over the country, but for every concern defined relating to space; for instance, a single factory or a branch of a bank (paragraph 9). The representation is also not confined to business undertakings, but to all organizations employing more than five workmen. Factories, commercial establishments, banks, shops, agricultural establishments (paragraph 4), state administration are on the same footing. Even those carrying on home industry (paragraph 3), for instance, tailors of ready-made dress who have the coats cut out by them sewn by seamstresses in their own homes, are supposed to have the workmen's representation. The representation is affected in establishments with at least twenty workmen through a "Betriebsrat" (paragraph 1), in smaller establishments through a "Betriebsobmann" (foreman), (paragraph 2).

While the radicals persisted in dropping the difference existing up to the present between workmen and employes, on the other side attention was drawn with convincing justification to the fact that the "brain workers" by no means formed a homogeneous stratum in face of the "manual

workers," but that within the so-called "brain workers," in view of the specialization and mechanization of labor, there existed more deeply marked differences between those with mechanized activity and the managing employes and mental workers than is the case between ordinary employes and "manual workers." Also, in this case, a compromise was arrived at on the strength of the difference hitherto drawn. As far as the employes are concerned the upper boundary line was drawn only insofar as "in the sense of this act the following are to be considered employes: the members of a board of directors and legal representatives of corporate bodies and of a collectivity of persons of public and private law, and also the business and working managers so far as they are entitled either to the independent engagement or dismissal of other employes (workmen) employed in the establishment or a section of the establishment or as far as they have been entrusted procuratorship or a general power of attorney" (paragraph 12).

CONSTRUCTION OF THE FACTORY REPRESENTATIONS ("BETRIEBSVERTRETUNGEN")

The number of members of the factory council (Betriebsrat) differs according to the number of workmen. It vacillates between three and thirty. But the factory council is in all cases only a combination of the workmen's council and the employes' council, together called groups' councils (Gruppenräte). Very complicated regulations regulate the numerical proportion of the various councils to one another (paragraphs 15 and 16). As everywhere in Germany through the revolution the secret vote with the proportional representation system has found acceptance, so it was the case here. (Electoral law of February 4,

1920.) Actively entitled to membership in committees are at present all employed males and females, at least eighteen years old. For future eligibility the age limit has been fixed at the age of at least twenty-four. In addition persons to be elected must belong for at least six months to the establishment and at least three years to the particular branch of industry or profession (paragraph 29). At the elections, in addition to the active members, supplementary members are to be elected in the same number. If a member retires the next candidate on the election list of his party steps into his place as a supplementary member (paragraph 40). The factory council can be dissolved by the arbitration board on the motion of the employer or of at least one quarter of the employed entitled to vote (paragraph 41). In such a case a new election is to be arranged for, if after the retirement of members, no more supplementary members can step into their places, and it therefore sinks below the prescribed number of members (paragraph 42).

The total number of employed can meet together in factory meetings (Betriebsversammlungen) (paragraph 45). These form the controlling body over the establishment representations. Such meetings were held, during the period of the revolution, again and again, and interfered with the work in a most disturbing manner. They are, therefore, only to take place outside the working time (paragraph 46).

The socialist members of the then government coalition had to avoid everything that limited the power of the trade-unions, through whom they had become great. Therefore, the right of the trade-unions to represent the interests of their members remains untouched (paragraph 8). Their representatives can take part in the fac-

tory meetings (paragraph 47). If in a generally binding tariff agreement other workmen's representations are provided for, these have the preference (paragraph 62). The act, therefore, does not always guard against further struggles, but here lays itself the foundation for them. The demand of the radical laborers that the "Betriebsrat" take over the management of the concern or at least interfere with the management, has been explicitly refused (paragraph 69). The "Betriebsrat" is in general confined to that field of activity, where it can fruitfully work in the interest of German economy. In the case of big concerns often a bond between the individual employe and the employer is missing. This the "Betriebsrat" is supposed to form. It has, therefore, the special task "to promote the understanding within the working class as well as between it and the employer" (paragraph 66, No. 6). To it belongs the supervision of the social-political and sanitary arrangements (paragraph 66, Nos. 8 and 9). In case of labor disputes it is the representative of the working class (paragraph 66, Nos. 3 and 4). As to concerns for which there exists a board of directors—in Germany, as is known, the board of directors is divided into the "Vorstand" who conduct the business and the "Aufsichtsrat" who supervise the management of the same—one or two members of the "Betriebsrat" are to be sent into the board of directors without the same being entitled to the income of the members of the board of directors, "according to a special law to be passed thereon" (paragraph 70). The law has, however, not yet been passed, therefore this hotly contested regulation has not yet come into operation. Finally the "Betriebsrat" is allowed to demand inspection of the business books—this, however, to an

extent also not yet determined (paragraphs 71 and 72). On the other hand, not to the "Betriebsrat," but to the workmen's council and the employes' council—to everyone for its circle of employers—belongs the coöperation in the formation of the work contracts, the "Mitbestimmungsrecht" (Right of joint control).

THE RIGHT OF JOINT CONTROL (MITBESTIMMUNGSRECHT)

The right of joint control offered the most important object of the party struggles. The radical groups wanted to place the engagement and dismissal of all laborers entirely in the hands of the two groups councils. This would not only have meant the enslaving of all independently thinking laborers, but at the same time have cut down immensely the work performed. For it is a fact that the very ablest laborers and employes go their own way and are, therefore, hated by the masses, while incapable workmen distinguish themselves by loyalty (*Gesinnungstüchtigkeit*). It is, however, due to the coöperation of all sober-minded circles that the right of joint control was curtailed in a way that in its application it can be characterized as not dangerous. The groups' councils are not to give their consent with regard to each new engagement, but together with the employer they only draw up fundamental lines concerning the engagement (paragraph 61). In case of notice being given on the part of the employer the dismissed workman can, within five days, appeal to his group council (paragraph 84). He has to state one of the legal reasons why he considers the notice to be unjustifiable. This veto has, however, no protracting effect. If the group council considers the notice to be justifiable, the matter is settled, otherwise the arbitration board has to decide.

The board of arbitration has, however, to suspend its decision, until judicial proceedings pending for that purpose have been legally decided (paragraph 86).

THE PRACTICAL SIGNIFICANCE OF THE "BETRIEBSRÄTE"

In accordance with the "Betriebsräte" act Betriebsräte have been elected everywhere. Attempts made by various "Betriebsräte" to transgress their legal competence are to be ascertained. There have been instances, where, without the act, the laborers would have enforced their will upon the contractor. The elections were naturally responsible during the election period for a depreciation of the work done in the plants. Unrest existed, however, formally in a light manner. As long as the labor market is firm and the workmen do not have to be anxious about their dismissal in case of bad work done, interruptions of work by political discussions will be unavoidable. If, however, the economic development requires dismissals to a large extent, according to the "Betriebsrätegesetz" superfluous workmen may be discharged. Experience teaches that the workmen's representatives agreeably coöperate with the employers in case of necessary dismissals. They form a body which carefully examines the conditions of the individual worker. The employer escapes the reproach of injustice. It is only a matter of doubt whether the gains surpass the expenditure caused by the act.

THE PREVENTION OF LABOR DIS- PUTES

German economic life must be protected against clashes caused by labor disputes, if Germany is to rise again. This result is attained to a very small extent by the "Betriebsrätegesetz." Labor disputes dangerous to the com-

munity arise only in very big concerns between the workmen of this concern and the employer. In other instances conditions in one establishment can, it is true, provide an external influence, but not the internal reason for the fight. The prevention of these minor disagreements is a matter of satisfaction, but it does not mean any protection against the great dangers of the fight between all workmen and all employers of one branch of industry. Trade-unionism and the association of employers are here opposed to one another, and it must be seen to that such a fight be settled as quickly as possible. For this purpose an extension of the procedure for the settling of labor disputes is essential. A sufficient regulation does not yet exist. They are working at it. The wrong measures would, however, be adopted if a strike or a lockout, called against arbitration were to be suppressed by force. Only public opinion can influence the party that is wrong to yield. It will, therefore, be necessary to see to it that the procedure before the board of reconciliation be not only public on paper, but that the state will see to it that objective news about pending disputes be given broadest publicity. It will above all be necessary that arbitrations be sufficiently well-founded and as far as possible all facts made known. The procedure which is in force now, namely to create higher tribunals above the arbitration bodies, curtails their significance. Where in these labor disputes there is solely the question of equity at stake, only the people as a whole are in a position to decide who is right.

The "Betriebsrätegesetz" must be considered as an attempt to bring workmen and employers nearer to one another. But still more direct means are needed in order to temper labor

disputes and, if possible, to prevent them. The further extension of this domain of jurisprudence is a necessity for Germany and for everyone interested in the further continuation of German economic life.